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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

WENDY HIGHTMAN, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

FCA US LLC, and DOES 1 through
10, inclusive,

Defendants.

Case No.: 18-cv-02205-BEN-KSC

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Violation of Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*)
2. Breach of Contract/Common Law Warranty (Based on California Law)
3. Breach of the Duty of Good Faith and Fair Dealing (Based on California Law)
4. Violations of California False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
5. Violation of California Consumer Legal Remedies Act (Cal. Civil Code § 1750 *et seq.*)
6. Violation of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

DEMAND FOR JURY TRIAL

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1 Plaintiff Wendy Hightman, an individual, on behalf of herself and on behalf of all
2 others similarly situated (*i.e.*, the members of the Plaintiff Class described and defined
3 within this Complaint), herein alleges as follows:

4 I. OVERVIEW

5 1. This is a civil action challenging Defendant FCA US LLC's (hereinafter
6 "FCA") breach of its Lifetime Limited Powertrain Warranties (hereinafter "Powertrain
7 Warranty" or "Lifetime Powertrain Warranty") for 2006, 2007, 2008, and 2009 Chrysler,
8 Dodge, and Jeep vehicles sold and delivered on or after July 26, 2007, with a Lifetime
9 Powertrain Warranty (hereinafter collectively referred to as ("Class Vehicles")).¹

10 A. FCA's Declining Sales, Overstocked Inventory, and Frustrated Dealers

11 2. By the first half of 2007, FCA's (at the time named "DaimlerChrysler
12 Motors Company LLC") U.S. sales were down about one percent.² The company was in
13 the early stages of its financial freefall; layoffs of 13,000 workers had been announced,
14 plants were closing, rumors of a merger or buyout were surmounting, and consumer
15 reports reflected low confidence in the reliability of FCA vehicles.³ To make matters
16 worse, the company was facing significant backlash from their dealers, who were
17 frustrated by overstocked inventories.⁴

18 3. To ease the tensions with their dealers, earlier that year, Steven Landry –
19 FCA's Executive Vice President of Sales and Marketing at the time – met with the
20 national dealer's council to discuss their agitations.⁵ Topping the list of their frustrations;

21
22 ¹ Excluded from Class Vehicles are SRT, Sprinter, diesel equipped, and all Ram
Cab/Chassis vehicles; these vehicles were not sold with Lifetime Warranties.

23 ² See <https://www.reuters.com/article/us-chrysler-warranty-idUSN2620687220070726>
24 [last accessed September 18, 2018] *see also*;
25 <https://www.mediapost.com/publications/article/64687/chrysler-bows-to-dealers-with-industry-first-lifet.html> [Last accessed August 22, 2018].

26 ³ See https://money.cnn.com/2007/02/14/news/companies/chrysler_jobcuts/index.htm?po
27 [stversion=2007021409](https://money.cnn.com/2007/02/14/news/companies/chrysler_jobcuts/index.htm?po) [last viewed on August 20, 2018]; *see also*
28 <https://www.consumerreports.org/cro/news/2007/10/consumer-reports-2007-annual-car-reliability-survey-highlights/index.htm> [last viewed on August 20, 2018].

⁴ *Supra* note 2.

⁵ *Id.*

1 overstocked inventory, lack of coordinated marketing, and lack of competitive warranty
2 offerings.⁶ Despite the competitive financial incentive offerings, customers were
3 reporting to dealers that vehicle warranties, specifically powertrain, was the chief
4 consideration to their purchase.⁷ And FCA's independent consumer research supported
5 this. This research showed that new-car shoppers said they would consider buying one of
6 FCA's vehicles if offered a lifetime powertrain warranty.⁸

7 **B. FCA's Lifetime Powertrain Warranty and National Advertising Campaign**

8 4. On July 26, 2007, FCA made an announcement that it hoped would drive
9 sales and increase brand confidence. Effective immediately, the company would offer a
10 Lifetime Limited Powertrain Warranty on 88 percent of their fleet models.⁹ Being an
11 unprecedented warranty offering, the announcement received coverage from a multitude
12 of news media outlets across the country.¹⁰

13 5. To say FCA's Lifetime Warranty was a selling point would be an
14 understatement; it was THE selling point of their vehicles at the time. FCA touted the
15 Lifetime Warranty with a nationally integrated TV, print, and internet advertising
16 campaign. The Warranty received its own logo; an infinity symbol bound by four wheels
17 – denoting the lifetime coverage on the vehicle. Print and online advertisements boasted
18 statements such as “the best warranty coverage in the business” and “with this warranty,
19

20 ⁶ *Id.*

21 ⁷ *Id.*

22 ⁸ See <https://www.reuters.com/article/us-chrysler-warranty/chrysler-using-lifetime-warranty-to-boost-sales-idUSN2620687220070726> [last viewed August 23, 2018].

24 ⁹ See <http://www.foxnews.com/story/2007/07/27/chrysler-offers-lifetime-warranties-on-car-and-truck-powertrains.html> [Last viewed August 23, 2018].

26 ¹⁰ *Id.*; see also <https://www.wsj.com/articles/SB118547434253679182> [last viewed August 23, 2018]; <http://articles.latimes.com/2007/jul/27/business/fi-chrysler27> [last viewed August 22, 2018]; <https://www.mercurynews.com/2007/07/26/chrysler-offers-lifetime-warranties-on-car-and-truck-powertrains/> [last viewed August 23, 2018]; https://money.cnn.com/2007/10/02/autos/warranty_tricks/index.htm [last viewed August 22, 2018].

1 you're covered for the lifetime of the vehicle.”¹¹ The “lifetime theme” was even built
2 into commercial slogans; for Dodge: “Grab life, for a lifetime.”; for Jeep: “have a lifetime
3 of fun out there”.¹² FCA’s executives pushed these advertisements with public
4 statements such as:

5 This new Chrysler Lifetime Powertrain Warranty is a statement
6 of confidence to our customers to the reliability of their
7 powertrain. It’s peace-of-mind reassurance for as long as they
8 own the vehicle.



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¹¹ See <https://www.nytimes.com/2007/08/16/business/media/16adco.html?mtrref=www.google.com> [last viewed August 23, 2018]; see also https://www.youtube.com/watch?v=Ckiq5qWzD_Q [last viewed August 23, 2018].

¹² *Supra* note 2.

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INTRODUCING THE BEST
WARRANTY COVERAGE
IN THE BUSINESS.

LIFETIME
POWERTRAIN WARRANTY

The Chrysler Lifetime Powertrain Limited Warranty is the first to be offered by any automaker. Ever. Because with this warranty, you're covered, and it lasts for as long as you own your vehicle.

OUR LIFETIME POWERTRAIN LIMITED WARRANTY IS THE ICING. OUR VEHICLES ARE THE CAKE.

The big news is that this powertrain limited warranty applies to the vast majority of our great new Chrysler, Jeep, and Dodge vehicles.* So if you always wanted to leave civilization behind and explore the great outdoors in a Jeep Wrangler or a Patriot, our powertrain

warranty goes with you. Or if you ever dreamed about cruising around town in the unmistakable Chrysler 300, relax. You won't be left stranded by a short-term powertrain warranty. Need a tough Dodge Ram truck for your job? You've got the peace of mind of knowing that our powertrain warranty is always there to keep you working.

THE NEXT STEP IS SIMPLE. GET TO YOUR CHRYSLER, JEEP, OR DODGE DEALER TODAY. The only difficult decision you have to make is picking which great vehicle you want. For more information, visit your local dealer.

300 WRANGLER RAM

CHRYSLER Jeep DODGE

*See dealer for a copy of limited warranty and details. New Transcendable. Not available on SUV, off-road vehicles, Sprinter, Ram/Chrysler/Cadillac, and certain fleet vehicles. On purchases beginning 1/1/2017. Chrysler, Jeep, and Dodge are registered trademarks of Chrysler Financial Group LLC.

22 **C. The Lifetime Warranty's Inspection Clause**

23 6. But none of the advertisements above disclosed that the Life Warranty was
24 subject to the inspection requirement and would be void if those inspection were not
25 performed within the arbitrarily narrow window of time. And FCA failed to empower its
26 dealers with the materials necessary to make consumers aware of the inspection clause
27 prior to their purchases.
28

7. Instead, FCA included this unconscionable provision in the fine print of the Lifetime Warranty. This provision – which wasn’t communicated to Class members prior to their purchase – required the Class Vehicles to undergo a powertrain inspection within 60 days of each 5-year anniversary of the in-service date of the vehicle (hereinafter referred to as “the Inspection Clause”).

8. FCA has routinely voided the Lifetime Powertrain based on the failure to have the powertrain inspected within that arbitrarily narrow window; a review of consumer blogs reveals numerous of these reported instances. Below are a few representative examples:

Make & Model: Chrysler Town & Country

Year:2008

Complaint:

I bought a 2008 Chrysler town & country and put it into service 21 Aug 2007. I chose this manufacturer specifically for the lifetime warranty. . . .the five year inspection was done within the constraints of Chrysler’s warranty by the original dealer's service department.

I vaguely remember the inspection being done because the vehicle was in for a recall. Regardless of the reason, the free inspection was completed at the five year point, but I missed the 10-year inspection. . . My transmission failed and I had the vehicle towed to another dealer for what I assumed would be warranty covered. The dealer said the warranty was expired and the cost to fix was over \$4800 . . .¹³

Make & Model: Chrysler 300

Year: 2008

Complaint:

I purchased my 08 Chrysler 300 in 2009. At the time, I also purchased the Mopar vehicle protection plan coverage for the

¹³ See <https://www.ripoffreport.com/reports/chrysler/missouri/chrysler-chrysler-dodge-jeep-eagle-ram-dodge-jeep-eagle-ram-cancelled-lifetime-e-1444040> [last viewed August 23, 2017]

1 life of the vehicle. . . . It gave me the piece of mind that if I ever
2 had any issues with the vehicle

3 It would be covered. I get my vehicle serviced at the Chrysler
4 dealership frequently and have minimal maintenance issues
5 until now. On Friday 12/09/2016 I experienced a coolant leak,

6 I promptly called my Chrysler vehicle protection to make sure
7 it was covered. Much to my surprise, I was informed by the
8 representative the powertrain portion of my warranty had been
9 voided due to a missed 5-year inspection . . . ¹⁴

10 **Make & Model:** Dodge Magnum

11 **Year:** 2007

12 **Complaint:**

13 Chrysler failed to provide the required information regarding
14 the inspection requirement of the lifetime limited powertrain
15 warranty that came with my 2007 dodge magnum. I did not
16 have any knowledge of the inspection and it is not in my
17 warranty booklet, and now Chrysler has terminated my
18 coverage due to missing the inspection.¹⁵

19 **Make & Model:** Chrysler Pacifica

20 **Year:** 2007

21 **Complaint:**

22 Purchased Chrysler Pacifica in 2007 because of lifetime
23 warranty on drive train. Even spent \$1800 on an extended
24 warranty (something we never usually do) because we planned
25 to keep the car a long time (great driving, good for wife).

26 Related: Fred Beans Chrysler Dodge Jeep Ram - "PA Safety
27 Inspection Failure!" Now I'm screwed!

28 In 2011, had to replace motor mounts (not a big deal and
interestingly [not] covered under either warranty). No other
problems until a week ago when the transmission died a
horrible death. Chrysler will not honor warranty because the car
was not inspected in 2012.

¹⁴ See <https://www.ripoffreport.com/reports/chrysler-company-llc/nationwide/chrysler-company-llc-chrysler-customer-assistance-department-chrysler-did-not-honor-mopar-1342995> [last viewed August 23, 2018].

¹⁵ See <https://www.ripoffreport.com/reports/chrysler-group-llc/nationwide/chrysler-group-llc-napleton-chrysler-jeep-dodge-ram-deceptive-lifetime-limited-powertrain-1142585> [last viewed August 23, 2018].

1 Called original dealer and they say inspection was not a
2 stipulation in 2007 when car was purchased. Chrysler should
3 have contacted us, which they never did.¹⁶

4 9. Again, these are merely a few examples; similar reported instances of FCA
5 voiding Lifetime Warranties under the Inspection Clause are prevalent.

6 10. Based on publicly available data, FCA sold 4,461,074 vehicles from 2007
7 through 2009; approximately 88 percent of those vehicles came with a Lifetime
8 Powertrain Warranty.¹⁷ By now, FCA has voided at least several thousand of these
9 warranties based on the inspection clause. Plaintiff and the putative Class argue that the
10 inspection clause – and enforcement of it – is unconscionable for the reasons explained
11 below.

12 **1. FCA Unfairly Surprised Class Members with the Inspection Clause**

13 11. FCA failed to provide Class members with the specific terms and conditions
14 of the Lifetime Warranty prior to purchasing Class Vehicles. Moreover, the terms and
15 conditions of the Lifetime Powertrain Warranty were not available on FCA's website and
16 FCA's customer service department was "not empowered" to provide inquiring
17 consumers with the terms and conditions of the Lifetime Powertrain Warranty.¹⁸ When
18 consumers were finally provided with the terms and conditions *after* they had already
19 purchased their Class Vehicle, the inspection clause – arguably the most consequential
20 provision – was in fine print and indistinguishable from the surrounding terms.

21 **2. The Inspection Clause Contravenes Reasonable Expectations**

22 12. Class members could not reasonably expect the Inspection Clause to be
23 included in the Warranty; it is not a typical provision, it serves no commercial purpose,
24

25 ¹⁶ See [https://chrysler.pissedconsumer.com/chrysler-will-not-honor-lifetime-warranty-on-](https://chrysler.pissedconsumer.com/chrysler-will-not-honor-lifetime-warranty-on-drive-train-20130714429266.html)
26 [drive-train-20130714429266.html](https://chrysler.pissedconsumer.com/chrysler-will-not-honor-lifetime-warranty-on-drive-train-20130714429266.html) [last viewed August 23, 2018].

27 ¹⁷ See [http://fcaauthority.com/fiat-chrysler-automobiles/fiat-chrysler-automobiles-sales-](http://fcaauthority.com/fiat-chrysler-automobiles/fiat-chrysler-automobiles-sales-numbers/)
28 [numbers/](http://fcaauthority.com/fiat-chrysler-automobiles/fiat-chrysler-automobiles-sales-numbers/) [last viewed September 26, 2018]; *see also supra* at note 9.

¹⁸ See [https://www.mouseprint.org/2007/08/06/chryslers-lifetime-warranty-the-ultimate-](https://www.mouseprint.org/2007/08/06/chryslers-lifetime-warranty-the-ultimate-hidden-guarantee/)
[hidden-guarantee/](https://www.mouseprint.org/2007/08/06/chryslers-lifetime-warranty-the-ultimate-hidden-guarantee/) [last viewed August 20, 2018].

1 and it is one-sided. Inspections – unlike scheduled maintenance – do not affect the
2 quality or fitness of powertrain components. No preventative service or maintenance is
3 performed during the quinquennial inspection. If a part is prone to failure or fails, FCA is
4 obligated under the Warranty to replace it. The questions as to who discovered the
5 failure, when the failure occurred, and/or when it was discovered, bears no relevancy to
6 the product’s defect. Therefore, the lack of opportunity to conduct a powertrain
7 inspection poses no additional risk to FCA; the inspection clause merely creates a risk of
8 warranty cancellation for the Class members.

9 **3. The Inspection Clause Produces One-sided, Unfair, and Harsh Results**

10 13. Finally, failure to adhere to the Inspection Clause produces particularly one-
11 sided, unfair, and harsh results. Failure to obtain an inspection doesn’t suspend coverage
12 until performance; it voids the entire warranty. Not only is this extremely inequitable, it
13 contravenes public policy when considering FCA’s advertising of the Lifetime Warranty.
14 The Lifetime Warranty coverage was the chief consideration of the Class members when
15 they purchased a Class vehicle and FCA knew this; they enticed Class members to
16 purchase Class Vehicles by promising a Lifetime Powertrain Warranty, and then
17 conveniently failed to mention the unconscionable terms and conditions that would void
18 their Lifetime Warranty.

19 14. This action is brought to redress Defendant’s violations of the consumer
20 protection statutes of California and the United States and to seek recovery for
21 Defendant’s breach of express warranty, breach of the duty of good faith and fair dealing,
22 breach of common law contract, false advertising, and unfair business practices.

23 **II. JURISDICTION AND VENUE**

24 15. This Court has diversity jurisdiction over this action under 28 U.S.C.
25 § 1332(a) and (d) because (1) there are more than 100 class members; (2) the amount in
26 controversy for the Class exceeds \$5,000,000; and (3) and Plaintiff and other putative
27 class members are citizens of a different states than Defendant.
28

16. This Court has personal jurisdiction over Defendant FCA because Defendant conducted and continues to conduct substantial business in the District, and because Defendant has committed the acts and omissions complained of herein in the District.

17. Venue as to Defendant is proper in this judicial district under 28 U.S.C § 1391 because Defendant sells a substantial number of automobiles in this district, has dealerships in this district, and many of Defendant's acts complained of herein occurred within this district.

III. PARTIES

18. Plaintiff Wendy Hightman is a resident and citizen San Diego, California. Plaintiff owns a 2007 Jeep Patriot, which she purchased on October 12, 2007, from a Chrysler dealership in Guam.

19. Defendant FCA US LLC (“FCA”) is a Delaware limited liability company. Fiat Chrysler Automobiles N.V. (“Fiat” or together with FCA, “Fiat Chrysler” is FCA’s corporate parent.

20. Fiat's predecessor, Fiat S.p.A., began its acquisition of FCA's predecessor, Chrysler Group LLC, in 2009, and completed it in January 2014, at which time Chrysler Group LLC became a wholly owned subsidiary of Fiat and was renamed FCA US LLC.

21. FCA's principle place of business and headquarters is located at 1000 Chrysler Drive, Auburn Hills, Michigan 48326. Fiat, the corporate parent of FCA, is a Dutch corporation headquartered in London, United Kingdom.

22. Fiat owns numerous European automotive brands in addition to FCA's American brands, including Maserati, Alfa Romeo, Fiat Automobiles, Fiat Professional, Lancia, and Abarth. As of 2017, Fiat Chrysler is the seventh largest automaker in the world by unit production.

23. Chrysler Group LLC developed and disseminated the owners' manuals, warranty booklets, product brochures, advertisements, and other promotional materials relating to the Class Vehicles, with the intent that such documents should be purposely distributed throughout all fifty states, including in California.

1 24. The true names and capacities of Defendants sued herein as DOES 1 through
2 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by
3 such fictitious names. Each of the Defendants designated herein as a DOE is legally
4 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
5 leave of Court to amend this Complaint to reflect the true names and capacities of the
6 Defendants designated herein as DOES when such identities become known.

7 25. Subject to a reasonable opportunity for further investigation or discovery,
8 Plaintiff alleges that Chrysler Group employees oversaw or were responsible for
9 advertising and marketing the Lifetime Powertrain Warranty.

10 **IV. FACTUAL ALLEGATIONS**

11 **A. Plaintiff Wendy Hightman's Purchase of a 2007 Jeep Patriot Vehicle**

12 26. On October 12, 2007, Plaintiff Wendy Hightman purchased a new 2007 Jeep
13 Patriot (hereinafter "the Jeep") from a Chrysler dealership in Guam.

14 27. Plaintiff was informed by a Chrysler dealership employee that her vehicle
15 was covered by Chrysler's Lifetime Powertrain Warranty. However, Plaintiff was not
16 provided the terms and conditions of the warranty until after she had completed the
17 purchase of her class vehicle.

18 28. None of FCA's advertisements or warranty booklets stated that the Lifetime
19 Warranty was subject to complete cancellation.

20 **B. Plaintiff Wendy Hightman's Transmission Repair**

21 29. On March 13, 2017, Plaintiff – now living in San Diego, California –
22 brought her Jeep into Carl Burger's Chrysler Jeep Dodge and RAM World (hereinafter
23 "Burger's Chrysler") because of a "whining sound" coming from the transmission. The
24 technician determined the sound stemmed from a transmission fuel leak in the right-axle,
25 repaired it, and confirmed the Jeep had "received a 16-point multi-inspection according
26 to the maintenance interval." No other mechanical issues were discovered by the
27 technician. These repairs were covered by FCA under the Lifetime Powertrain Warranty.
28

C. FCA's Breach of the Lifetime Warranty

30. On July 6, 2018, Plaintiff Wendy Hightman brought the Jeep to Burger's Chrysler because the check engine light was on. Following the inspection, the technician determined that the engine gasket needed to be replaced. Plaintiff reasonably expected this to be covered under her Lifetime Powertrain Warranty but FCA denied coverage for the claim. As justification, FCA asserted that Plaintiff failed to adhere to the maintenance inspection terms, which in relevant part provides:

In order to maintain the Lifetime Powertrain Limited Warranty, the person . . . covered by this Power-train Limited Warranty must have a powertrain inspection performed by an authorized Chrysler, Dodge, or Jeep dealer once every 5 years. . . . The inspection must be made within sixty (60) days of each 5 year anniversary of the in-service date of the vehicle. You must have the inspection performed to continue this coverage.

(hereinafter "the Inspection Clause")

31. According to FCA, although the Jeep admittedly underwent a second powertrain inspection, such inspection did not occur within 60-days of the second 5-year purchase anniversary, but rather, seven months prior to the 10-year purchase date anniversary. Solely on this basis, FCA declined to replace or repair the engine gasket and voided the Jeep's Lifetime Warranty. Having no other choice, Plaintiff paid \$2,307.16 to have the Jeep's engine gasket replaced by Burger's Chrysler; a repair that would have been covered by FCA's Lifetime Powertrain Warranty.

32. On July 16, 2018, Plaintiff again brought the Jeep into Burger's Chrysler because of a transmission failure. Again, FCA refused to cover the repair under warranty. The cost for Plaintiff to have the transmission repaired was estimated at \$5,128.87.

V. CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure, Rule 23(a), (b)(2), and (b)(3) on behalf of the following classes:

Nationwide Class:

All persons or entities in the United States who are current original owners of a Class Vehicle and all current and former original owners of a Class Vehicle who were denied coverage under the Lifetime Powertrain Warranty based on the Inspection Clause.

34. In the alternative to the Nationwide Class, and pursuant to Federal Rules of Civil Procedure, Rule 23(c)(5), Plaintiff seeks to represent the California Class in the event that the Court declines to certify the Nationwide Class above. Specifically, the California Class consists of the following:

California Class

All persons or entities in California who are current original owners of a Class Vehicle and all current and former original owners of a Class Vehicle who were denied Lifetime Powertrain Warranty coverage based on the Inspection Clause.

35. Together, the Nationwide Class and the California Class shall be collectively referred to herein as “the Class.” Excluded from the above Class are Defendant, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly own subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons.

36. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the

1 same evidence as would be used to prove those elements in individual actions alleging
2 the same claim.

3 37. This action has been brought and may be properly maintained on behalf of
4 each of the Classes proposed herein under Federal Rules of Civil Procedure, Rule 23.

5 38. **Numerosity of the Class (Federal Rules of Civil Procedure, Rule**
6 **23(a)(1)** – The members of the Class are so numerous that their individual joinder is
7 impracticable. Plaintiff is informed and believes that there are tens of thousands of
8 current original owners of Class Vehicles and former original owners of Class Vehicles
9 who were denied coverage under the Lifetime Powertrain Warranty based on the
10 Inspection Clause. Because the class members may be identified through business
11 records regularly maintained by Defendant and its employees and agents, government
12 records, and the media, the number and identities of class members can be ascertained.
13 Members of the Class can be notified of the pending action by e-mail, mail, and
14 supplemented by published notice, if necessary.

15 39. **Commonality and Predominance (Federal Rules of Civil Procedure,**
16 **Rule 23(a)(2)** – There are questions of law and fact common to the Class. These
17 questions predominate over any questions affecting only individual class members.
18 These common legal and factual issues include, but are not limited to:
19 a. Whether FCA breached the expressed terms of the Lifetime Powertrain
20 Warranty in their systematic denial of valid Lifetime Powertrain
21 Warranty claims, based on the Inspection Clause.
22 b. Whether the Inspection Clause produces unfair and harsh results; thus,
23 rendering it unconscionable.
24 c. Whether FCA breached the covenant of good faith and fair dealing by
25 denying coverage for Lifetime Powertrain Warranty claims based on the
26 Inspection Clause.
27 d. Whether Plaintiff and members of the class are entitled to equitable,
28 legal, or injunctive relief and, if so, in what amount.

1 40. **Typicality (Federal Rules of Civil Procedure, Rule 23(a)(3))** – The claims
2 of the representative Plaintiff are typical of the claims of each member of the Class.
3 Plaintiff, like all other members of the Class, is both a current original owner of a Class
4 Vehicle and has sustained damages arising from Defendant’s cancellation of her Lifetime
5 Powertrain Warranty based on the Inspection Clause. as alleged herein. The
6 representative Plaintiff and the members of the Class were and are similarly or identically
7 harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of
8 misconduct engaged in by Defendant.

9 41. **Adequacy (Federal Rules of Civil Procedure, Rule 23(a)(4))** – The
10 representative Plaintiff will fairly and adequately represent and protect the interests of the
11 Class members and have retained counsel who are experienced and competent trial
12 lawyers in complex litigation and class action litigation. There are no material conflicts
13 between the claims of the representative Plaintiff and the members of the Class that
14 would make class certification inappropriate. Counsel for the Class will vigorously assert
15 the claims of all Class members.

16 42. **Superiority (Federal Rules of Civil Procedure, Rule 23(b)(3))** – This suit
17 may be maintained as a class action under Rule 23(b)(3) of the Federal Rules of Civil
18 Procedure, because questions of law and fact common to the Class predominate over the
19 questions affecting only individual members of the Class and a class action is superior to
20 other available means for the fair and efficient adjudication of this dispute. The damages
21 suffered by individual class members are small compared to the burden and expense of
22 individual prosecution of the complex and extensive litigation needed to address
23 Defendant’s conduct. Further, it would be virtually impossible for the members of the
24 Class to individually redress effectively the wrongs done to them. Even if Class
25 members themselves could afford such individual litigation, the court system could not.
26 In addition, individualized litigation increases the delay and expense to all parties and to
27 the court system resulting from complex legal and factual issues of the case.
28 Individualized litigation also presents a potential for inconsistent or contradictory

1 judgments. By contrast, the class action device presents far fewer management
2 difficulties; allows the hearing of claims which might otherwise go unaddressed because
3 of the relative expense of bringing individual lawsuits; and provides the benefits of single
4 adjudication, economies of scale, and comprehensive supervision by a single court.

5 43. The Class Plaintiff contemplates the eventual issuance of notice to the
6 proposed Class members setting forth the subject and nature of the instant action. Upon
7 information and belief, Defendant's own business records and electronic media can be
8 utilized for the contemplated notices, as well as motor vehicle registration databases in
9 California and all other states within the United States. To the extent that any further
10 notices may be required, the Class Plaintiff would contemplate the use of additional
11 media and/or mailings.

12 44. This action is properly maintained as a Class Action pursuant to Rule 23(b)
13 of the Federal Rules of Civil Procedure, in that:

14 a. without class certification and determination of declaratory,
15 injunctive, statutory, and other legal questions within the class format, prosecution of
16 separate actions by individual members of the Class will create the risk of:

17 i. inconsistent or varying adjudications with respect to individual
18 members of the Class which would establish incompatible standards of conduct for the
19 parties opposing the Class; or

20 ii. adjudication with respect to individual members of the Class
21 which would as a practical matter be dispositive of the interests of the other members not
22 parties to the adjudication or substantially impair or impede their ability to protect their
23 interests;

24 b. the parties opposing the Class have acted or refused to act on grounds
25 generally applicable to each member of the Class, thereby making appropriate final
26 injunctive or corresponding declaratory relief with respect to the Class as a whole; or

27 c. common questions of law and fact exist as to the members of the
28 Class and predominate over any questions affecting only individual members, and a Class

1 Action is superior to other available methods of the fair and efficient adjudication of the
2 controversy, including consideration of:

- 3 i. the interests of the members of the Class in individually
4 controlling the prosecution or defense of separate actions;
5 ii. the extent and nature of any litigation concerning controversy
6 already commenced by or against members of the Class;
7 iii. the desirability or undesirability of concentrating the litigation
8 of the claims in the particular forum; and
9 iv. the difficulties likely to be encountered in the management of a
10 Class Action.

11 **VI. VIOLATIONS ALLEGED**

12 **FIRST CAUSE OF ACTION**

13 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**

14 **(15 U.S.C. § 2301, et seq.)**

15 **(On behalf of the Nationwide Class, or Alternatively the California Class)**

16 45. Plaintiff incorporates by reference each preceding and succeeding paragraph
17 as though fully set forth at length herein.

18 46. Plaintiff brings this claim on behalf of herself and on behalf of the
19 Nationwide Class or, alternatively, on behalf of the California Class.

20 47. Plaintiff and the Class members are “consumers” within the meaning of the
21 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

22 48. FCA is a “supplier” and “warrantor” within the meaning of the Magnuson-
23 Moss Warranty Act, 15 U.S.C. § 2301(4)-(5);

24 49. The Class Vehicles are “consumer products” within the meaning of the
25 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

26 50. Title 15, United States Code, section 2301(d)(1) provides a cause of action
27 for any consumer who is damaged by the failure of a warrantor to comply with a written
28 or implied warranty.

1 51. FCA's Lifetime Warranties are written warranties within the meaning of the
2 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6).

3 52. FCA breached these warranties as described in more detail above. All Class
4 Vehicles were sold with the Lifetime Powertrain Limited Warranty and are subject to the
5 same terms and conditions.

6 53. As described above, FCA violated the Magnusson-Moss Warranty Act, 15
7 U.S.C. § 2302(b)(1)(A); 16 C.F.R. § 702.3 by failing to make the Lifetime Warranty
8 available or visible to Plaintiff and other Class members prior to the sale of the Class
9 vehicles.

10 54. Plaintiff and the other Class members have had sufficient direct dealings
11 with either FCA or its agents (dealerships and technical support) to establish privity of
12 contract between FCA, on the one hand, and Plaintiff and each of the other Class
13 members on the other hand. Nonetheless, privity is not required here because Plaintiff
14 and each of the other Class members are intended third-party beneficiaries of contracts
15 between FCA and its dealers, and specifically, of FCA's express Lifetime Powertrain
16 Warranty. The dealers were not intended to be the ultimate consumers of the Class
17 Vehicles and have no rights under the warranty agreements provided with the Class
18 Vehicles; the warranty agreements were designed for and intended to benefit the
19 consumers only.

20 55. Affording FCA a reasonable opportunity to cure its breach of written
21 warranties would be unnecessary and futile here. Plaintiff has already done so by
22 contacting FCA after being told that her engine gasket would not be covered under the
23 Warranty because its void.

24 56. As a direct and proximate cause of Defendant's breach, Plaintiff and the
25 other Class Members bought Class Vehicles they otherwise would not have, overpaid for
26 their vehicles, did not receive the benefit of their bargain, and their Class Vehicles
27 suffered a diminution in value. Plaintiff and Class Members have also incurred and will
28

1 continue to incur costs related to the diagnosis and repair of the defective powertrain
2 parts.

3 57. The amount in controversy of Plaintiff's individual claims meets or exceeds
4 the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000,
5 exclusive of interest and costs, computed on the basis of all claims to be determined in
6 this lawsuit.

7 58. Plaintiff, individually and on behalf of the other Class members, seeks all
8 damages permitted by law, including diminution in value of the Class Vehicles, in an
9 amount to be proven at trial.

10 **SECOND CAUSE OF ACTION**

11 **BREACH OF CONTRACT/Common Law Warranty**

12 **(Based on California Law)**

13 **(On behalf of the California Class)**

14 59. Plaintiff incorporates by reference each preceding and succeeding paragraph
15 as though fully set forth at length herein.

16 60. Plaintiff, individually and on behalf of the other Class members, pleads in
17 the alternative under common law warranty and contract law.

18 61. Plaintiff brings this claim on behalf of herself and on behalf of the California
19 Class.

20 62. FCA breached this warranty or contract obligation by refusing to repair or
21 replace powertrain components of the Class Vehicles and voiding the Lifetime
22 Powertrain Warranty.

23 63. The material terms of the contract also included the implied covenant of
24 good faith and fair dealing, whereby FCA covenanted that they would, in good faith and
25 in the exercise of fair dealing, deal with Plaintiff and each Class member fairly and
26 honestly and do nothing to impair, interfere with, hinder, or potentially injure Plaintiff's
27 and the Class members' rights and benefits under the contract.
28

1 64. To the extent that FCA attempted to limit its obligations of warranty
2 coverage with the Inspection Clause, that clause is unconscionable as stated above and, in
3 any event, was not available, much less disclosed, to Plaintiff and Class Members until
4 after the purchase of the Class Vehicles.

5 65. As a direct and proximate result of FCA's breach of contract or common law
6 warranty, Plaintiff and the other Class members have been damaged in an amount to be
7 proven at trial, which shall include, but is not limited to, all compensatory damages,
8 incidental and consequential damages, and other damages allowed by law.

9 **THIRD CAUSE OF ACTION**

10 **BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

11 **(Based on California Law)**

12 **(On behalf of the California Class)**

13 66. Plaintiff incorporates by reference each preceding and succeeding paragraph
14 as though fully set forth at length herein.

15 67. Plaintiff brings this claim on behalf of herself and on behalf of the California
16 Class.

17 68. All contracts in California contain an implied covenant of good faith and fair
18 dealing. The implied covenant of good faith and fair dealing is an independent duty and
19 may be breached even if there is no breach of a contract's express terms.

20 69. Defendant acted in bad faith to deny Plaintiff and the Class Members some
21 benefit of the bargain originally intended by the parties, thereby causing them injuries in
22 an amount to be determined at trial.

23 70. FCA breached the contract and the implied covenant of good faith and fair
24 dealing by denying Plaintiff's claim and voiding her warranty without reasonable
25 justification.

26 71. As a direct and proximate result of FCA's breach of the duty of good faith
27 and fair dealing, Plaintiff and the other Class members have been damaged in an amount
28

1 to be proven at trial, which shall include, but is not limited to, all compensatory damages,
2 incidental and consequential damages, and other damages allowed by law.

3 **FOURTH CAUSE OF ACTION**
4 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**
5 **(California Business & Professions Code §§ 17500, *et seq.*)**
6 **(On behalf of the California Class)**

7 72. Plaintiff incorporates by reference each preceding and succeeding paragraph
8 as though fully set forth at length herein.

9 73. California Business & Professions Code § 17500 states: “It is unlawful for
10 any . . . corporation . . . with intent directly or indirectly to dispose of real or personal
11 property . . . to induce the public to enter into any obligation relating thereto, to make or
12 disseminate or cause to be made or disseminated . . . from this state before the public in
13 any state, in any newspaper or other publication, or any advertising device, . . . or in any
14 other manner or means whatever, including over the Internet, any statement . . . which is
15 untrue or misleading, and which is known, or which by the exercise of reasonable care
16 should be known, to be untrue or misleading.”

17 74. FCA caused to be made or disseminated through California and the United
18 States, through advertising, marketing and other publications, statements that were untrue
19 or misleading, including statements that Class members “would receive peace-of-mind
20 reassurance for as long as they own the vehicle” with the Lifetime Powertrain Warranty.
21 However, the Warranty included an unconscionable provision – the Inspection Clause –
22 which was not disclosed to consumers prior to the point of purchase, that made it subject
23 to complete cancellation.

24 75. FCA violated section 17500 because the representations and omissions
25 regarding the Lifetime Powertrain Warranty for the Class Vehicles as set forth in this
26 Complaint were material and likely to mislead a reasonable consumer.

27 76. Plaintiff and the other Class members suffered an injury in fact, including
28 the loss of money or property, as a result of FCA’s unfair and misleading practices. In

1 purchasing their Class Vehicles, Plaintiff and the other Class members relied on the
2 misrepresentations and/or omissions regarding the Lifetime Warranty. FCA
3 representations Class members “would receive peace-of-mind reassurance for as long as
4 they own the vehicle” with a “Lifetime Powertrain Warranty” turned out not to be true, as
5 stated above. Had Plaintiff and the other Class members known this, they would not
6 have purchased their Class Vehicles and/or paid as much for them.

7 77. All of the wrongful conduct alleged herein occurred in the conduct of FCA’s
8 business. FCA’s wrongful conduct is part of a pattern or generalized course of conduct
9 perpetuated both in the State of California and nationwide.

10 78. Plaintiff, individually and on behalf of the other Class members, request that
11 this Court enter such orders or judgments as may be necessary to enjoin FCA from
12 denying future Lifetime Powertrain Warranty claims and to restore to Plaintiff and the
13 other Class members any money FCA acquired by unfair competition, including
14 restitution and/or restitutionary disgorgement, and for such other relief set forth below.

15 **FIFTH CAUSE OF ACTION**

16 **Violation of California Consumer Legal Remedies Act**

17 **(Civil Code § 1750 *et seq.*)**

18 **(On behalf of the California Class)**

19 79. Plaintiff incorporates by reference each preceding and succeeding paragraph
20 as though fully set forth at length herein.

21 80. California’s Consumers Legal Remedies Act (“CLRA”), California Civil
22 Code §§ 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive
23 acts or practices undertaken by any person in a transaction intended to result or which
24 results in the sale or lease of goods or services to any consumer.”

25 81. The Class Vehicles are “goods” as defined in California Civil Code
26 § 1761(a).
27
28

1 82. Plaintiff and the other Class members are “consumers” as defined in
2 California Civil Code § 1761(d), and Plaintiff, the other Class members, and Defendant
3 are “persons” as defined in California Civil Code § 1761(c).

4 83. Plaintiff’s and each and every Class members’ purchase of the subject
5 vehicle constitute “transactions” as defined by California Civil Code § 1761(e).

6 84. The acts and practices of Defendant as discussed throughout the Complaint,
7 constitute “unfair or deceptive acts or practices” by Defendant, that are unlawful, as
8 enumerated in section 1770(a) of the California Civil Code, specifically in at least the
9 following CLEA provision:

- 10 i. Cal. Civ. Code § 1770(a)(5): Representing that goods have
11 characteristics, uses, and benefits which they do not have;
12 ii. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell
13 them as advertised; and
14 iii. Cal. Civ. Code § 1770 (a)(19): inserting an unconscionable provision
15 in the contract.

16 85. Plaintiff and the other Class members have suffered injury in fact and actual
17 damages resulting from FCA’s inclusion of the Inspection Clause in the Lifetime
18 Powertrain Warranty.

19 86. FCA had superior bargaining power to the Plaintiff; they drafted the
20 Warranty terms and those terms were non-negotiable. Moreover, the Inspection Clause
21 was not disclosed to Class members prior to their purchase. The facts concealed and
22 omitted by FCA to Plaintiff and the other Class members are material in that a reasonable
23 consumer would have considered them to be important in deciding whether to purchase
24 the Class Vehicles or pay a lower price.

25 87. As stated in detail above, the Inspection Clause resulted in unfair and harsh
26 results. Moreover, it served no viable commercial purpose.

27 88. Had Plaintiff known about the Inspection Clause, they would not have
28 purchased the Class Vehicles or would not have paid the prices they paid in fact.

1 89. Such misconduct materially affected the purchasing decisions of Plaintiff
2 and the members of the Classes.

3 90. Plaintiff's and the other California Class members' injuries were
4 proximately caused by FCA's unfair and deceptive business practices.

5 91. Plaintiff seeks restitution and injunctive relief pursuant to California Civil
6 Code § 1780.

7 92. Plaintiff has provided Defendant with notice of his alleged violations of the
8 CLRA pursuant to California Civil Code § 1782(a). If, within 30 days of the date of this
9 written notice, Defendant fails to provide appropriate relief for their violation of the
10 CLRA, Plaintiff will amend this Complaint to seek monetary, compensatory, and punitive
11 damages, in addition to the injunctive relief now being sought, under the CLRA.

12 **SIXTH CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

14 **(California Business & Professions Code §§ 17200, *et seq.*)**

15 **(On behalf of the California Class)**

16 93. Plaintiff incorporates by reference each preceding and succeeding paragraph
17 as though fully set forth at length herein.

18 94. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.*, defines unfair business competition to include any "unfair,"
20 "deceptive," "unlawful," or "untrue" business act or practice. The Act also provides for
21 injunctive relief, restitution, and disgorgement of profits for violations.

22 95. FCA's misleading, deceptive, unfair, and business acts and practices, as
23 described throughout this Complaint, was and is in violation of the UCL. FCA's conduct
24 violates the UCL in the following ways:

- 25 i. by knowingly and intentionally concealing from Plaintiff and the
26 other Class Members prior to their purchase of a Class Vehicle that
27 the Lifetime Powertrain Warranty was conditioned upon an
28 arbitrary requirement that Class Vehicles be inspected within 60

- 1 days of every five-year anniversary of the purchase date while
2 obtaining money from Plaintiff and the Class Members;
3 ii. by representing to Class members that they “would receive peace-
4 of-mind reassurance for as long as they own the vehicle” with the
5 Lifetime Powertrain Warranty;
6 iii. by refusing or otherwise failing to honor the Lifetime Powertrain
7 Warranty based on the unconscionable Inspection Clause;
8 iv. by violating federal laws, including the Magnuson-Moss Warranty
9 Act. 15 U.S.C. § 2301;
10 v. by violating California’s False Advertising Law, California Civil
11 Code §§ 17500, *et seq.*; and
12 vi. by violating California’s Consumer Remedies Act, California Civil
13 Code §§ 1770 (a)(19).

14 96. FCA’s misrepresentations and omissions alleged herein caused Plaintiff and
15 the other Class members to make their purchases of their Class Vehicles. Absent those
16 misrepresentations and omissions, Plaintiff and the other Class members would not have
17 purchased these Vehicles, would not have purchased these Class Vehicles at the prices
18 they paid, and/or would have purchased less expensive alternative vehicles with
19 practicable warranty conditions.

20 97. Defendant’s practice is also unfair since it has no utility and, even if it did,
21 any utility is outweighed by the gravity of harm to Plaintiff and the Class members.
22 Defendant’s practice is also immoral, unethical, oppressive or unscrupulous and causes
23 injury to consumers which outweigh its benefits.

24 98. Accordingly, Plaintiff and the Class members have suffered injury in fact,
25 including lost money or property as a result of FCA’s actions, misrepresentations, and
26 omissions.

27 99. Plaintiff seeks to enjoin further unlawful and/or unfair practices by FCA,
28 under California Business and Professions Code §§ 17200 *et seq.*

1 100. Plaintiff requests that this Court enter such orders or judgments as may be
2 necessary to enjoin FCA from continuing their unfair and unlawful practices.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of herself and the members of the Class,
5 demands judgment against and general and special relief from Defendant as follows:

- 6 1. for an order certifying that the action may be maintained as a Class
7 Action as defined herein and appointing Plaintiff and her counsel of
8 record to represent the defined Class;
- 9 2. for an order enjoining Defendant under California Business and
10 Professions Code §§ 17203 and 17535 and California Civil Code
11 §§ 1780 and 1781:
- 12 a. from engaging in the wrongful conduct of voiding the Lifetime
13 Powertrain Warranty based on the unconscionable Inspection
14 Clause as alleged herein; and
- 15 b. to disgorge all profits and compensation improperly obtained by
16 Defendant as a result of such acts and practices declared by this
17 Court to be an unlawful, fraudulent, or unfair business act or
18 practice, a violation of laws, statutes, or regulations, or constituting
19 unfair competition;
- 20 3. for damages under the causes of breach of express warranty, breach of
21 contract and/or the covenant of good faith and fair dealing;
- 22 4. for reasonable attorney's fees and costs, pursuant to California Code
23 of Civil Procedure § 1021.5, and other statutes as may be applicable;
- 24 5. for prejudgment interest to the extent allowed by law;

25 //

26 //

27 //

28 //

6. for costs of suit incurred herein; and

7. for such other and further relief as the Court deems appropriate

DATED: October 5, 2018

MCCUNE WRIGHT AREVALO, LLP

BY: /s/ David C. Wright

David C. Wright

Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims so triable.

DATED: October 5, 2018

McCUNE WRIGHT AREVALO, LLP

BY: /s/ David C. Wright

David C. Wright

Attorney for Plaintiff